

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 28, 1985

MEMORANDUM

SUBJECT: Post-Closure Permits

FROM: John H. Skinner, Director Office of Solid Waste

TO: Waste Management Division Directors, Regions I-X

Issue

40 CFR 270.1(c) requires any hazardous waste disposal unit that closes after January 26, 1983, to have a permit during the post-closure care period. This requirement raises several issues which are not addressed by the regulations and for which guidance has been requested:

- Who must apply for a post-closure permit?
- What information must be submitted to satisfy the Part B application requirements?
- What is required of Owner/operators of storage surface impoundments who choose to attempt to "close by removal"?
- How does the proposed amendment to 40 CFR 270.1(c) affect the applicability of the post-closure permit requirement?

This guidance applies only to units closing while in interim status. If a unit is already permitted, it closes under the terms of the closure and post-closure plans that are conditions of the permit.

Regulatory Background

40 CFR 270.1(c) currently requires any hazardous waste disposal unit that closes after January 26, 1983, to have a permit for any applicable post-closure care period. In addition, per §264.90(a), as modified by RCRA §3005(i), a unit that receives waste after July 26, 1982, is a regulated unit and is subject to the ground-water protection requirements of Part 264, Subpart F when a permit is issued. The proposed codification rule for the Hazardous and Solid Waste Act of 1984 (HSWA) would amend §270.1(c)

post-closure permits for any land disposal unit which receives waste after July 26, 1982. This memorandum addresses the potential impacts of the proposed regulatory amendment as well as the requirements of the current regulations and the statute.

Applicability

The dates of closure and final receipt of waste at a disposal unit determine the applicability of post-closure permits. For purposes of this guidance, the date of closure means the date that closure was certified pursuant to §265.115. If an interim status unit has not been closed according to an approved closure plan and certified under §265.115, it is not considered closed.

In general, a unit will fall into one of the following four categories regarding the potential applicability of post-closure requirements:

1. Unit completed closure before January 26, 1983, and did not receive wastes after July 26, 1982.

The unit is not subject to post-closure permit requirements or Part 264 ground-water protection requirements, but applicable interim status post-closure requirements must be satisfied. Interim status corrective action orders (RCRA §3008 (h)) may be used when necessary to require clean-up of ground-water contamination and other releases from such units. In addition, corrective action requirements under §3004 (u) may apply to releases from the unit as conditions of a permit for another unit at the same site.

Proposed §270.1(c) would not affect this category of facilities.

2. Unit closed after January 26, 1983, and received wastes after July 26, 1982.

Such units are subject to post-closure permit requirements (as specified in 270.1(c)), and will be required to obtain post-closure permits. Until a post-closure permit is issued, owner/operators of such facilities must comply with the Part 265 requirements for closure and post-closure. Corrective action orders may be used in the interim.

The proposed amendment to §270.1(c) would not affect this category of facilities.

3. Unit closed after January 26, 1983, but did not receive waste after July 26, 1982.

Under current regulations, these facilities are subject to post-closure permitting requirements (per §270.1(c)), but are not regulated units (per §264.90 (a)) and therefore a permit could not include Part 264 Subpart F ground-water protection provisions. If the unit in question has released hazardous waste or constituents, two alternatives are available to require corrective action. One option is to issue a §3008(h) corrective action order. The other is to issue a permit to another unit at the facility which treats the closed unit as a solid waste management unit and requires corrective action under §3004 (u).

Proposed §270.1(c) would make receipt of wastes after July 26, 1982, the test for applying the post-closure permitting requirements. Therefore, after the effective date of the new provision, a unit of the type described would no longer be required to obtain a permit. However, if a permit is issued for another, regulated unit at the same facility, that permit would have to require cleanup of any releases from solid waste management units, including any units of the type described in this scenario.

4. Unit completed closure before January 26, 1983, and received waste after July 26, 1982.

Under current regulations, the unit would be a regulated unit, but would not be subject to a post-closure permit according to §270.1(c). Without a permit, Part 264 ground-water protection requirements could only be applied through the closure process. A 3008 (h) order may also be used to require the facility to clean up ground water to standards that protect human health and the environment. Alternatively, as in case number one, corrective action requirements may be applied as conditions of a permit for another unit at the site.

Again, proposed §270.1(c) would make receipt of wastes after July 26, 1982, the test date for applying all Part 264 post-closure requirements. Therefore, after the effective date, units described by this scenario would need a permit.

“Closure by Removal”

40 CFR 265.110 (b) provides that post-closure care requirements apply to the owners and operators of all hazardous waste disposal facilities, including land treatment units. Therefore, when a disposal unit closes while in interim status, an interim status post-closure plan must be submitted along with the interim status closure plan. In addition, the owner/operator must submit an application for a post-closure permit upon request, subject to the conditions of applicability listed above (40 CFR 270.1(b) and (c)). The interim status post-closure plan must be followed until a post-closure permit is issued.

Surface impoundments and waste piles may or may not be treated as disposal units. If the unit is closed in accordance with the requirements of §265.228(a) or (b) or 265.258(a) (i.e., “closure by removal”), it is not treated as a disposal unit and is not subject to any further post-closure requirements.* This does not, however, preclude the use of 3008 (h) or 3004 (u) authorities when appropriate. If the owner/operator cannot or chooses not to close in accordance with the requirements of §265.228 (a) or (b), the unit is treated as a disposal unit and is subject to the post-closure care requirements of Part 265 and, upon issuance of any applicable permit, Part 264.

If a plan for closure by removal is approved, but it is subsequently determined that closure by removal did not or cannot be completed for the unit(s), the units are then subject to post-closure care requirements and a post-closure permit will be required where applicable. An interim status post-closure plan must be submitted immediately and financial assurance

*It should be noted that for closure by removal, the requirement for removal of underlying and surrounding contaminated soil includes contaminated ground water if necessary.

established for post-closure care. The post-closure permit application should also be requested immediately following the determination that closure by removal cannot be achieved.

HSWA Deadlines

RCRA §3005 (e) requires all interim status land disposal facilities to submit an application “for a final determination regarding the issuance of a permit” and certification of compliance with all applicable ground-water monitoring and financial responsibility requirements by November 8, 1985 to retain interim status. All landfills, surface impoundments, land treatment units, and waste piles are treated as land disposal facilities for the purposes of this provision and must certify compliance and submit an application for a final determination regarding issuance of a permit by November 8, 1985, in accordance with the loss of interim status guidance.

Processing Procedures and Priorities

The Part 270 and 124 regulations do not differentiate between processing procedures for RCRA operating permits and permits for the post-closure care period only. Therefore, processing procedures are the same.

States and Regions should use the guidance in the Revised FY 1985 RCRA Implementation Plan and the draft Revised National Permits Strategy to identify the most environmentally significant facilities and develop facility management plans for them, including a schedule for issuance of a post-closure permit where applicable. Review of interim status closure plans is generally given a high priority by the National Permits Strategy and should be scheduled as soon as possible given resource constraints and other program responsibilities. Further actions and their schedules should be tailored to the specific situation according to the environmental significance of the facility. If permit issuance is delayed, post-closure care must be conducted under an interim status post-closure plan until the permit is issued. Corrective action orders may also be used in the interim.

Post-Closure Part B Requirements

40 CFR 270.14 establishes the information requirements for a RCRA permit application. Because of the inherent differences between an operating permit and a permit covering only post-closure care activities, some of the information requirements for an operating permit will not be applicable to a permit for the post-closure care- period. As §270.10(c) gives EPA and States the authority to determine that the application is complete whenever an application form and supplemental information are completed to the satisfaction of the Director, this Office recommends that the Director only require that information which is relevant to post-closure care activities. Relevant information must be determined on a case-by-case basis. At a minimum, however, it should include:

A. Current Regulatory Requirements (§270.14):

- A copy of the post-closure inspection schedule (§270.14 (b) (5))
- A copy of the post-closure plan (§270.14(b)(13))
- Documentation of the notice in deed or an appropriate alternative instrument (§270.14 (b) (14))
- Cost estimate for post-closure and post-closure financial mechanism (§270.14) (b) (16))
- A copy of the state financial instrument if appropriate (§270.14) (b) (18))
- Ground water monitoring and protection data (§270.14 (c))

B. New information required by the Hazardous and Solid Waste Amendments of 1984, including at least:

- SWMu information §3004 (u)
- Financial assurance for corrective action §3004 (a)
- Exposure information for landfills & surface impoundments.